

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Purpose.

5 (a) This Act is not intended to make any substantive change  
6 in the law. It reconciles conflicts that have arisen from  
7 multiple amendments and enactments made to Section 29B-1 of the  
8 Criminal Code of 1961 by Public Acts 94-364 and 94-556. It also  
9 makes a technical correction in subdivision (1)(3) of that  
10 Section.

11 (b) In this Act, the reference at the end of Section 29B-1  
12 of the Criminal Code of 1961 indicates the sources in the  
13 Session Laws of Illinois that were used in the preparation of  
14 the text of that Section. The text of Section 29B-1 included in  
15 this Act is intended to include the different versions of that  
16 Section found in the Public Acts included in the list of  
17 sources, but may not include other versions of the Section to  
18 be found in Public Acts not included in the list of sources.  
19 The list of sources is not a part of the text of the Section.  
20 Except for the one technical correction made in subdivision  
21 (1)(3), the text of Section 29B-1 contains no striking or  
22 underscoring because no other changes are being made in the  
23 material that is being combined.

24 Section 5. The Criminal Code of 1961 is amended by changing  
25 Section 29B-1 as follows:

26 (720 ILCS 5/29B-1) (from Ch. 38, par. 29B-1)

27 Sec. 29B-1. (a) A person commits the offense of money  
28 laundering:

29 (1) when, knowing that the property involved in a  
30 financial transaction represents the proceeds of some form  
31 of unlawful activity, he or she conducts or attempts to

1           conduct such a financial transaction which in fact involves  
2           criminally derived property:

3                   (A) with the intent to promote the carrying on of  
4                   the unlawful activity from which the criminally  
5                   derived property was obtained; or

6                   (B) where he or she knows or reasonably should know  
7                   that the financial transaction is designed in whole or  
8                   in part:

9                           (i) to conceal or disguise the nature, the  
10                           location, the source, the ownership or the control  
11                           of the criminally derived property; or

12                           (ii) to avoid a transaction reporting  
13                           requirement under State law; or

14                   (1.5) when he or she transports, transmits, or  
15                   transfers, or attempts to transport, transmit, or transfer  
16                   a monetary instrument:

17                           (A) with the intent to promote the carrying on of  
18                           the unlawful activity from which the criminally  
19                           derived property was obtained; or

20                           (B) knowing, or having reason to know, that the  
21                           financial transaction is designed in whole or in part:

22                                   (i) to conceal or disguise the nature, the  
23                                   location, the source, the ownership or the control  
24                                   of the criminally derived property; or

25                                   (ii) to avoid a transaction reporting  
26                                   requirement under State law; or

27                   (2) when, with the intent to:

28                                   (A) promote the carrying on of a specified criminal  
29                                   activity as defined in this Article; or

30                                   (B) conceal or disguise the nature, location,  
31                                   source, ownership, or control of property believed to  
32                                   be the proceeds of a specified criminal activity as  
33                                   defined by subdivision (b) (6); or

34                                   (C) avoid a transaction reporting requirement  
35                                   under State law,

36                   he or she conducts or attempts to conduct a financial

1 transaction involving property he or she believes to be the  
2 proceeds of specified criminal activity as defined by  
3 subdivision (b)(6) or property used to conduct or  
4 facilitate specified criminal activity as defined by  
5 subdivision (b)(6).

6 (b) As used in this Section:

7 (0.5) "Knowing that the property involved in a  
8 financial transaction represents the proceeds of some form  
9 of unlawful activity" means that the person knew the  
10 property involved in the transaction represented proceeds  
11 from some form, though not necessarily which form, of  
12 activity that constitutes a felony under State, federal, or  
13 foreign law, regardless of whether or not such activity is  
14 specified in subdivision (b)(4).

15 (1) "Financial transaction" means a purchase, sale,  
16 loan, pledge, gift, transfer, delivery or other  
17 disposition utilizing criminally derived property, and  
18 with respect to financial institutions, includes a  
19 deposit, withdrawal, transfer between accounts, exchange  
20 of currency, loan, extension of credit, purchase or sale of  
21 any stock, bond, certificate of deposit or other monetary  
22 instrument, use of safe deposit box, or any other payment,  
23 transfer or delivery by, through, or to a financial  
24 institution. For purposes of clause (a)(2) of this Section,  
25 the term "financial transaction" also means a transaction  
26 which without regard to whether the funds, monetary  
27 instruments, or real or personal property involved in the  
28 transaction are criminally derived, any transaction which  
29 in any way or degree: (1) involves the movement of funds by  
30 wire or any other means; (2) involves one or more monetary  
31 instruments; or (3) the transfer of title to any real or  
32 personal property. The receipt by an attorney of bona fide  
33 fees for the purpose of legal representation is not a  
34 financial transaction for purposes of this Section.

35 (2) "Financial institution" means any bank; saving and  
36 loan association; trust company; agency or branch of a

1 foreign bank in the United States; currency exchange;  
2 credit union, mortgage banking institution; pawnbroker;  
3 loan or finance company; operator of a credit card system;  
4 issuer, redeemer or cashier of travelers checks, checks or  
5 money orders; dealer in precious metals, stones or jewels;  
6 broker or dealer in securities or commodities; investment  
7 banker; or investment company.

8 (3) "Monetary instrument" means United States coins  
9 and currency; coins and currency of a foreign country;  
10 travelers checks; personal checks, bank checks, and money  
11 orders; investment securities; bearer negotiable  
12 instruments; bearer investment securities; or bearer  
13 securities and certificates of stock in such form that  
14 title thereto passes upon delivery.

15 (4) "Criminally derived property" means: (A) any  
16 property, real or personal, constituting or derived from  
17 proceeds obtained, directly or indirectly, pursuant to a  
18 violation of the Criminal Code of 1961, the Illinois  
19 Controlled Substances Act, the Cannabis Control Act, or the  
20 Methamphetamine Control and Community Protection Act; or  
21 (B) any property represented to be property constituting or  
22 derived from proceeds obtained, directly or indirectly,  
23 pursuant to a violation of this Code, the Illinois  
24 Controlled Substances Act, the Cannabis Control Act, or the  
25 Methamphetamine Control and Community Protection Act.

26 (5) "Conduct" or "conducts" includes, in addition to  
27 its ordinary meaning, initiating, concluding, or  
28 participating in initiating or concluding a transaction.

29 (6) "Specified criminal activity" means any violation  
30 of Section 20.5-5 (720 ILCS 5/20.5-5) and any violation of  
31 Article 29D of this Code.

32 (7) "Director" means the Director of State Police or  
33 his or her designated agents.

34 (8) "Department" means the Department of State Police  
35 of the State of Illinois or its successor agency.

36 (9) "Transaction reporting requirement under State

1 law" means any violation as defined under the Currency  
2 Reporting Act.

3 (c) Sentence.

4 (1) Laundering of criminally derived property of a  
5 value not exceeding \$10,000 is a Class 3 felony;

6 (2) Laundering of criminally derived property of a  
7 value exceeding \$10,000 but not exceeding \$100,000 is a  
8 Class 2 felony;

9 (3) Laundering of criminally derived property of a  
10 value exceeding \$100,000 but not exceeding \$500,000 is a  
11 Class 1 felony;

12 (4) Money laundering in violation of subsection (a)(2)  
13 of this Section is a Class X felony;

14 (5) Laundering of criminally derived property of a  
15 value exceeding \$500,000 is a Class 1 non-probationable  
16 felony.

17 (d) Evidence. In a prosecution under this Article, either  
18 party may introduce the following evidence pertaining to the  
19 issue of whether the property or proceeds were known to be some  
20 form of criminally derived property or from some form of  
21 unlawful activity:

22 (1) A financial transaction was conducted or  
23 structured or attempted in violation of the reporting  
24 requirements of any State or federal law; or

25 (2) A financial transaction was conducted or attempted  
26 with the use of a false or fictitious name or a forged  
27 instrument; or

28 (3) A falsely altered or completed written instrument  
29 or a written instrument that contains any materially false  
30 personal identifying information was made, used, offered  
31 or presented, whether accepted or not, in connection with a  
32 financial transaction; or

33 (4) A financial transaction was structured or  
34 attempted to be structured so as to falsely report the  
35 actual consideration or value of the transaction; or

36 (5) A money transmitter, a person engaged in a trade or

1 business or any employee of a money transmitter or a person  
2 engaged in a trade or business, knows or reasonably should  
3 know that false personal identifying information has been  
4 presented and incorporates the false personal identifying  
5 information into any report or record; or

6 (6) The criminally derived property is transported or  
7 possessed in a fashion inconsistent with the ordinary or  
8 usual means of transportation or possession of such  
9 property and where the property is discovered in the  
10 absence of any documentation or other indicia of legitimate  
11 origin or right to such property; or

12 (7) A person pays or receives substantially less than  
13 face value for one or more monetary instruments; or

14 (8) A person engages in a transaction involving one or  
15 more monetary instruments, where the physical condition or  
16 form of the monetary instrument or instruments makes it  
17 apparent that they are not the product of bona fide  
18 business or financial transactions.

19 (e) Duty to enforce this Article.

20 (1) It is the duty of the Department of State Police,  
21 and its agents, officers, and investigators, to enforce all  
22 provisions of this Article, except those specifically  
23 delegated, and to cooperate with all agencies charged with  
24 the enforcement of the laws of the United States, or of any  
25 state, relating to money laundering. Only an agent,  
26 officer, or investigator designated by the Director may be  
27 authorized in accordance with this Section to serve seizure  
28 notices, warrants, subpoenas, and summonses under the  
29 authority of this State.

30 (2) Any agent, officer, investigator, or peace officer  
31 designated by the Director may: (A) make seizure of  
32 property pursuant to the provisions of this Article; and  
33 (B) perform such other law enforcement duties as the  
34 Director designates. It is the duty of all State's  
35 Attorneys to prosecute violations of this Article and  
36 institute legal proceedings as authorized under this

1 Article.

2 (f) Protective orders.

3 (1) Upon application of the State, the court may enter  
4 a restraining order or injunction, require the execution of  
5 a satisfactory performance bond, or take any other action  
6 to preserve the availability of property described in  
7 subsection (h) for forfeiture under this Article:

8 (A) upon the filing of an indictment, information,  
9 or complaint charging a violation of this Article for  
10 which forfeiture may be ordered under this Article and  
11 alleging that the property with respect to which the  
12 order is sought would be subject to forfeiture under  
13 this Article; or

14 (B) prior to the filing of such an indictment,  
15 information, or complaint, if, after notice to persons  
16 appearing to have an interest in the property and  
17 opportunity for a hearing, the court determines that:

18 (i) there is probable cause to believe that the  
19 State will prevail on the issue of forfeiture and  
20 that failure to enter the order will result in the  
21 property being destroyed, removed from the  
22 jurisdiction of the court, or otherwise made  
23 unavailable for forfeiture; and

24 (ii) the need to preserve the availability of  
25 the property through the entry of the requested  
26 order outweighs the hardship on any party against  
27 whom the order is to be entered.

28 Provided, however, that an order entered pursuant  
29 to subparagraph (B) shall be effective for not more  
30 than 90 days, unless extended by the court for good  
31 cause shown or unless an indictment, information,  
32 complaint, or administrative notice has been filed.

33 (2) A temporary restraining order under this  
34 subsection may be entered upon application of the State  
35 without notice or opportunity for a hearing when an  
36 indictment, information, complaint, or administrative

1 notice has not yet been filed with respect to the property,  
2 if the State demonstrates that there is probable cause to  
3 believe that the property with respect to which the order  
4 is sought would be subject to forfeiture under this Section  
5 and that provision of notice will jeopardize the  
6 availability of the property for forfeiture. Such a  
7 temporary order shall expire not more than 30 days after  
8 the date on which it is entered, unless extended for good  
9 cause shown or unless the party against whom it is entered  
10 consents to an extension for a longer period. A hearing  
11 requested concerning an order entered under this paragraph  
12 shall be held at the earliest possible time and prior to  
13 the expiration of the temporary order.

14 (3) The court may receive and consider, at a hearing  
15 held pursuant to this subsection (f), evidence and  
16 information that would be inadmissible under the Illinois  
17 rules of evidence.

18 (4) Order to repatriate and deposit.

19 (A) In general. Pursuant to its authority to enter  
20 a pretrial restraining order under this Section, the  
21 court may order a defendant to repatriate any property  
22 that may be seized and forfeited and to deposit that  
23 property pending trial with the Illinois State Police  
24 or another law enforcement agency designated by the  
25 Illinois State Police.

26 (B) Failure to comply. Failure to comply with an  
27 order under this subsection (f) is punishable as a  
28 civil or criminal contempt of court.

29 (g) Warrant of seizure. The State may request the issuance  
30 of a warrant authorizing the seizure of property described in  
31 subsection (h) in the same manner as provided for a search  
32 warrant. If the court determines that there is probable cause  
33 to believe that the property to be seized would be subject to  
34 forfeiture, the court shall issue a warrant authorizing the  
35 seizure of such property.

36 (h) Forfeiture.

1 (1) The following are subject to forfeiture:

2 (A) any property, real or personal, constituting,  
3 derived from, or traceable to any proceeds the person  
4 obtained directly or indirectly, as a result of a  
5 violation of this Article;

6 (B) any of the person's property used, or intended  
7 to be used, in any manner or part, to commit, or to  
8 facilitate the commission of, a violation of this  
9 Article;

10 (C) all conveyances, including aircraft, vehicles  
11 or vessels, which are used, or intended for use, to  
12 transport, or in any manner to facilitate the  
13 transportation, sale, receipt, possession, or  
14 concealment of property described in subparagraphs (A)  
15 and (B), but:

16 (i) no conveyance used by any person as a  
17 common carrier in the transaction of business as a  
18 common carrier is subject to forfeiture under this  
19 Section unless it appears that the owner or other  
20 person in charge of the conveyance is a consenting  
21 party or privy to a violation of this Article;

22 (ii) no conveyance is subject to forfeiture  
23 under this Section by reason of any act or omission  
24 which the owner proves to have been committed or  
25 omitted without his or her knowledge or consent;

26 (iii) a forfeiture of a conveyance encumbered  
27 by a bona fide security interest is subject to the  
28 interest of the secured party if he or she neither  
29 had knowledge of nor consented to the act or  
30 omission;

31 (D) all real property, including any right, title,  
32 and interest (including, but not limited to, any  
33 leasehold interest or the beneficial interest in a land  
34 trust) in the whole of any lot or tract of land and any  
35 appurtenances or improvements, which is used or  
36 intended to be used, in any manner or part, to commit,

1 or in any manner to facilitate the commission of, any  
2 violation of this Article or that is the proceeds of  
3 any violation or act that constitutes a violation of  
4 this Article.

5 (2) Property subject to forfeiture under this Article  
6 may be seized by the Director or any peace officer upon  
7 process or seizure warrant issued by any court having  
8 jurisdiction over the property. Seizure by the Director or  
9 any peace officer without process may be made:

10 (A) if the seizure is incident to a seizure  
11 warrant;

12 (B) if the property subject to seizure has been the  
13 subject of a prior judgment in favor of the State in a  
14 criminal proceeding, or in an injunction or forfeiture  
15 proceeding based upon this Article;

16 (C) if there is probable cause to believe that the  
17 property is directly or indirectly dangerous to health  
18 or safety;

19 (D) if there is probable cause to believe that the  
20 property is subject to forfeiture under this Article  
21 and the property is seized under circumstances in which  
22 a warrantless seizure or arrest would be reasonable; or

23 (E) in accordance with the Code of Criminal  
24 Procedure of 1963.

25 (3) In the event of seizure pursuant to paragraph (2),  
26 forfeiture proceedings shall be instituted in accordance  
27 with subsections (i) through (r).

28 (4) Property taken or detained under this Section shall  
29 not be subject to replevin, but is deemed to be in the  
30 custody of the Director subject only to the order and  
31 judgments of the circuit court having jurisdiction over the  
32 forfeiture proceedings and the decisions of the State's  
33 Attorney under this Article. When property is seized under  
34 this Article, the seizing agency shall promptly conduct an  
35 inventory of the seized property and estimate the  
36 property's value and shall forward a copy of the inventory

1 of seized property and the estimate of the property's value  
2 to the Director. Upon receiving notice of seizure, the  
3 Director may:

4 (A) place the property under seal;

5 (B) remove the property to a place designated by  
6 the Director;

7 (C) keep the property in the possession of the  
8 seizing agency;

9 (D) remove the property to a storage area for  
10 safekeeping or, if the property is a negotiable  
11 instrument or money and is not needed for evidentiary  
12 purposes, deposit it in an interest bearing account;

13 (E) place the property under constructive seizure  
14 by posting notice of pending forfeiture on it, by  
15 giving notice of pending forfeiture to its owners and  
16 interest holders, or by filing notice of pending  
17 forfeiture in any appropriate public record relating  
18 to the property; or

19 (F) provide for another agency or custodian,  
20 including an owner, secured party, or lienholder, to  
21 take custody of the property upon the terms and  
22 conditions set by the Director.

23 (5) When property is forfeited under this Article, the  
24 Director shall sell all such property unless such property  
25 is required by law to be destroyed or is harmful to the  
26 public, and shall distribute the proceeds of the sale,  
27 together with any moneys forfeited or seized, in accordance  
28 with paragraph (6). However, upon the application of the  
29 seizing agency or prosecutor who was responsible for the  
30 investigation, arrest or arrests and prosecution which  
31 lead to the forfeiture, the Director may return any item of  
32 forfeited property to the seizing agency or prosecutor for  
33 official use in the enforcement of laws, if the agency or  
34 prosecutor can demonstrate that the item requested would be  
35 useful to the agency or prosecutor in its enforcement  
36 efforts. When any real property returned to the seizing

1 agency is sold by the agency or its unit of government, the  
2 proceeds of the sale shall be delivered to the Director and  
3 distributed in accordance with paragraph (6).

4 (6) All monies and the sale proceeds of all other  
5 property forfeited and seized under this Article shall be  
6 distributed as follows:

7 (A) 65% shall be distributed to the metropolitan  
8 enforcement group, local, municipal, county, or State  
9 law enforcement agency or agencies which conducted or  
10 participated in the investigation resulting in the  
11 forfeiture. The distribution shall bear a reasonable  
12 relationship to the degree of direct participation of  
13 the law enforcement agency in the effort resulting in  
14 the forfeiture, taking into account the total value of  
15 the property forfeited and the total law enforcement  
16 effort with respect to the violation of the law upon  
17 which the forfeiture is based. Amounts distributed to  
18 the agency or agencies shall be used for the  
19 enforcement of laws.

20 (B) (i) 12.5% shall be distributed to the Office of  
21 the State's Attorney of the county in which the  
22 prosecution resulting in the forfeiture was  
23 instituted, deposited in a special fund in the county  
24 treasury and appropriated to the State's Attorney for  
25 use in the enforcement of laws. In counties over  
26 3,000,000 population, 25% shall be distributed to the  
27 Office of the State's Attorney for use in the  
28 enforcement of laws. If the prosecution is undertaken  
29 solely by the Attorney General, the portion provided  
30 hereunder shall be distributed to the Attorney General  
31 for use in the enforcement of laws.

32 (ii) 12.5% shall be distributed to the Office  
33 of the State's Attorneys Appellate Prosecutor and  
34 deposited in the Narcotics Profit Forfeiture Fund  
35 of that office to be used for additional expenses  
36 incurred in the investigation, prosecution and

1 appeal of cases arising under laws. The Office of  
2 the State's Attorneys Appellate Prosecutor shall  
3 not receive distribution from cases brought in  
4 counties with over 3,000,000 population.

5 (C) 10% shall be retained by the Department of  
6 State Police for expenses related to the  
7 administration and sale of seized and forfeited  
8 property.

9 (i) Notice to owner or interest holder.

10 (1) Whenever notice of pending forfeiture or service of  
11 an in rem complaint is required under the provisions of  
12 this Article, such notice or service shall be given as  
13 follows:

14 (A) If the owner's or interest holder's name and  
15 current address are known, then by either personal  
16 service or mailing a copy of the notice by certified  
17 mail, return receipt requested, to that address. For  
18 purposes of notice under this Section, if a person has  
19 been arrested for the conduct giving rise to the  
20 forfeiture, then the address provided to the arresting  
21 agency at the time of arrest shall be deemed to be that  
22 person's known address. Provided, however, if an owner  
23 or interest holder's address changes prior to the  
24 effective date of the notice of pending forfeiture, the  
25 owner or interest holder shall promptly notify the  
26 seizing agency of the change in address or, if the  
27 owner or interest holder's address changes subsequent  
28 to the effective date of the notice of pending  
29 forfeiture, the owner or interest holder shall  
30 promptly notify the State's Attorney of the change in  
31 address; or

32 (B) If the property seized is a conveyance, to the  
33 address reflected in the office of the agency or  
34 official in which title or interest to the conveyance  
35 is required by law to be recorded, then by mailing a  
36 copy of the notice by certified mail, return receipt

1 requested, to that address; or

2 (C) If the owner's or interest holder's address is  
3 not known, and is not on record as provided in  
4 paragraph (B), then by publication for 3 successive  
5 weeks in a newspaper of general circulation in the  
6 county in which the seizure occurred.

7 (2) Notice served under this Article is effective upon  
8 personal service, the last date of publication, or the  
9 mailing of written notice, whichever is earlier.

10 (j) Notice to State's Attorney. The law enforcement agency  
11 seizing property for forfeiture under this Article shall,  
12 within 90 days after seizure, notify the State's Attorney for  
13 the county, either where an act or omission giving rise to the  
14 forfeiture occurred or where the property was seized, of the  
15 seizure of the property and the facts and circumstances giving  
16 rise to the seizure and shall provide the State's Attorney with  
17 the inventory of the property and its estimated value. When the  
18 property seized for forfeiture is a vehicle, the law  
19 enforcement agency seizing the property shall immediately  
20 notify the Secretary of State that forfeiture proceedings are  
21 pending regarding such vehicle.

22 (k) Non-judicial forfeiture. If non-real property that  
23 exceeds \$20,000 in value excluding the value of any conveyance,  
24 or if real property is seized under the provisions of this  
25 Article, the State's Attorney shall institute judicial in rem  
26 forfeiture proceedings as described in subsection (l) of this  
27 Section within 45 days from receipt of notice of seizure from  
28 the seizing agency under subsection (j) of this Section.  
29 However, if non-real property that does not exceed \$20,000 in  
30 value excluding the value of any conveyance is seized, the  
31 following procedure shall be used:

32 (1) If, after review of the facts surrounding the  
33 seizure, the State's Attorney is of the opinion that the  
34 seized property is subject to forfeiture, then within 45  
35 days after the receipt of notice of seizure from the  
36 seizing agency, the State's Attorney shall cause notice of

1 pending forfeiture to be given to the owner of the property  
2 and all known interest holders of the property in  
3 accordance with subsection (i) of this Section.

4 (2) The notice of pending forfeiture must include a  
5 description of the property, the estimated value of the  
6 property, the date and place of seizure, the conduct giving  
7 rise to forfeiture or the violation of law alleged, and a  
8 summary of procedures and procedural rights applicable to  
9 the forfeiture action.

10 (3) (A) Any person claiming an interest in property  
11 which is the subject of notice under paragraph (1) of this  
12 subsection (k), must, in order to preserve any rights or  
13 claims to the property, within 45 days after the effective  
14 date of notice as described in subsection (i) of this  
15 Section, file a verified claim with the State's Attorney  
16 expressing his or her interest in the property. The claim  
17 must set forth:

18 (i) the caption of the proceedings as set forth on  
19 the notice of pending forfeiture and the name of the  
20 claimant;

21 (ii) the address at which the claimant will accept  
22 mail;

23 (iii) the nature and extent of the claimant's  
24 interest in the property;

25 (iv) the date, identity of the transferor, and  
26 circumstances of the claimant's acquisition of the  
27 interest in the property;

28 (v) the name and address of all other persons known  
29 to have an interest in the property;

30 (vi) the specific provision of law relied on in  
31 asserting the property is not subject to forfeiture;

32 (vii) all essential facts supporting each  
33 assertion; and

34 (viii) the relief sought.

35 (B) If a claimant files the claim and deposits with  
36 the State's Attorney a cost bond, in the form of a

1 cashier's check payable to the clerk of the court, in  
2 the sum of 10% of the reasonable value of the property  
3 as alleged by the State's Attorney or the sum of \$100,  
4 whichever is greater, upon condition that, in the case  
5 of forfeiture, the claimant must pay all costs and  
6 expenses of forfeiture proceedings, then the State's  
7 Attorney shall institute judicial in rem forfeiture  
8 proceedings and deposit the cost bond with the clerk of  
9 the court as described in subsection (l) of this  
10 Section within 45 days after receipt of the claim and  
11 cost bond. In lieu of a cost bond, a person claiming  
12 interest in the seized property may file, under penalty  
13 of perjury, an indigency affidavit which has been  
14 approved by a circuit court judge.

15 (C) If none of the seized property is forfeited in  
16 the judicial in rem proceeding, the clerk of the court  
17 shall return to the claimant, unless the court orders  
18 otherwise, 90% of the sum which has been deposited and  
19 shall retain as costs 10% of the money deposited. If  
20 any of the seized property is forfeited under the  
21 judicial forfeiture proceeding, the clerk of the court  
22 shall transfer 90% of the sum which has been deposited  
23 to the State's Attorney prosecuting the civil  
24 forfeiture to be applied to the costs of prosecution  
25 and the clerk shall retain as costs 10% of the sum  
26 deposited.

27 (4) If no claim is filed or bond given within the 45  
28 day period as described in paragraph (3) of this subsection  
29 (k), the State's Attorney shall declare the property  
30 forfeited and shall promptly notify the owner and all known  
31 interest holders of the property and the Director of State  
32 Police of the declaration of forfeiture and the Director  
33 shall dispose of the property in accordance with law.

34 (l) Judicial in rem procedures. If property seized under  
35 the provisions of this Article is non-real property that  
36 exceeds \$20,000 in value excluding the value of any conveyance,

1 or is real property, or a claimant has filed a claim and a cost  
2 bond under paragraph (3) of subsection (k) of this Section, the  
3 following judicial in rem procedures shall apply:

4 (1) If, after a review of the facts surrounding the  
5 seizure, the State's Attorney is of the opinion that the  
6 seized property is subject to forfeiture, then within 45  
7 days of the receipt of notice of seizure by the seizing  
8 agency or the filing of the claim and cost bond, whichever  
9 is later, the State's Attorney shall institute judicial  
10 forfeiture proceedings by filing a verified complaint for  
11 forfeiture and, if the claimant has filed a claim and cost  
12 bond, by depositing the cost bond with the clerk of the  
13 court. When authorized by law, a forfeiture must be ordered  
14 by a court on an action in rem brought by a State's  
15 Attorney under a verified complaint for forfeiture.

16 (2) During the probable cause portion of the judicial  
17 in rem proceeding wherein the State presents its  
18 case-in-chief, the court must receive and consider, among  
19 other things, all relevant hearsay evidence and  
20 information. The laws of evidence relating to civil actions  
21 apply to all other portions of the judicial in rem  
22 proceeding.

23 (3) Only an owner or interest holder in the property  
24 may file an answer asserting a claim against the property  
25 in the action in rem. For purposes of this Section, the  
26 owner or interest holder shall be referred to as claimant.  
27 Upon motion of the State, the court shall first hold a  
28 hearing, wherein any claimant must establish by a  
29 preponderance of the evidence, that he or she has a lawful,  
30 legitimate ownership interest in the property and that it  
31 was obtained through a lawful source.

32 (4) The answer must be signed by the owner or interest  
33 holder under penalty of perjury and must set forth:

34 (A) the caption of the proceedings as set forth on  
35 the notice of pending forfeiture and the name of the  
36 claimant;

1 (B) the address at which the claimant will accept  
2 mail;

3 (C) the nature and extent of the claimant's  
4 interest in the property;

5 (D) the date, identity of transferor, and  
6 circumstances of the claimant's acquisition of the  
7 interest in the property;

8 (E) the name and address of all other persons known  
9 to have an interest in the property;

10 (F) all essential facts supporting each assertion;  
11 and

12 (G) the precise relief sought.

13 (5) The answer must be filed with the court within 45  
14 days after service of the civil in rem complaint.

15 (6) The hearing must be held within 60 days after  
16 filing of the answer unless continued for good cause.

17 (7) The State shall show the existence of probable  
18 cause for forfeiture of the property. If the State shows  
19 probable cause, the claimant has the burden of showing by a  
20 preponderance of the evidence that the claimant's interest  
21 in the property is not subject to forfeiture.

22 (8) If the State does not show existence of probable  
23 cause, the court shall order the interest in the property  
24 returned or conveyed to the claimant and shall order all  
25 other property forfeited to the State. If the State does  
26 show existence of probable cause, the court shall order all  
27 property forfeited to the State.

28 (9) A defendant convicted in any criminal proceeding is  
29 precluded from later denying the essential allegations of  
30 the criminal offense of which the defendant was convicted  
31 in any proceeding under this Article regardless of the  
32 pendency of an appeal from that conviction. However,  
33 evidence of the pendency of an appeal is admissible.

34 (10) An acquittal or dismissal in a criminal proceeding  
35 does not preclude civil proceedings under this Article;  
36 however, for good cause shown, on a motion by the State's

1 Attorney, the court may stay civil forfeiture proceedings  
2 during the criminal trial for a related criminal indictment  
3 or information alleging a money laundering violation. Such  
4 a stay shall not be available pending an appeal. Property  
5 subject to forfeiture under this Article shall not be  
6 subject to return or release by a court exercising  
7 jurisdiction over a criminal case involving the seizure of  
8 such property unless such return or release is consented to  
9 by the State's Attorney.

10 (11) All property declared forfeited under this  
11 Article vests in this State on the commission of the  
12 conduct giving rise to forfeiture together with the  
13 proceeds of the property after that time. Any such property  
14 or proceeds subsequently transferred to any person remain  
15 subject to forfeiture and thereafter shall be ordered  
16 forfeited.

17 (12) A civil action under this Article must be  
18 commenced within 5 years after the last conduct giving rise  
19 to forfeiture became known or should have become known or 5  
20 years after the forfeitable property is discovered,  
21 whichever is later, excluding any time during which either  
22 the property or claimant is out of the State or in  
23 confinement or during which criminal proceedings relating  
24 to the same conduct are in progress.

25 (m) Stay of time periods. If property is seized for  
26 evidence and for forfeiture, the time periods for instituting  
27 judicial and non-judicial forfeiture proceedings shall not  
28 begin until the property is no longer necessary for evidence.

29 (n) Settlement of claims. Notwithstanding other provisions  
30 of this Article, the State's Attorney and a claimant of seized  
31 property may enter into an agreed-upon settlement concerning  
32 the seized property in such an amount and upon such terms as  
33 are set out in writing in a settlement agreement.

34 (o) Property constituting attorney fees. Nothing in this  
35 Article applies to property which constitutes reasonable bona  
36 fide attorney's fees paid to an attorney for services rendered

1 or to be rendered in the forfeiture proceeding or criminal  
2 proceeding relating directly thereto where such property was  
3 paid before its seizure, before the issuance of any seizure  
4 warrant or court order prohibiting transfer of the property and  
5 where the attorney, at the time he or she received the property  
6 did not know that it was property subject to forfeiture under  
7 this Article.

8 (p) Construction. It is the intent of the General Assembly  
9 that the forfeiture provisions of this Article be liberally  
10 construed so as to effect their remedial purpose. The  
11 forfeiture of property and other remedies hereunder shall be  
12 considered to be in addition to, and not exclusive of, any  
13 sentence or other remedy provided by law.

14 (q) Judicial review. If property has been declared  
15 forfeited under subsection (k) of this Section, any person who  
16 has an interest in the property declared forfeited may, within  
17 30 days after the effective date of the notice of the  
18 declaration of forfeiture, file a claim and cost bond as  
19 described in paragraph (3) of subsection (k) of this Section.  
20 If a claim and cost bond is filed under this Section, then the  
21 procedures described in subsection (l) of this Section apply.

22 (r) Burden of proof of exemption or exception. It is not  
23 necessary for the State to negate any exemption or exception in  
24 this Article in any complaint, information, indictment or other  
25 pleading or in any trial, hearing, or other proceeding under  
26 this Article. The burden of proof of any exemption or exception  
27 is upon the person claiming it.

28 (s) Review of administrative decisions. All administrative  
29 findings, rulings, final determinations, findings, and  
30 conclusions of the State's Attorney's Office under this Article  
31 are final and conclusive decisions of the matters involved. Any  
32 person aggrieved by the decision may obtain review of the  
33 decision pursuant to the provisions of the Administrative  
34 Review Law and the rules adopted pursuant to that Law. Pending  
35 final decision on such review, the administrative acts, orders,  
36 and rulings of the State's Attorney's Office remain in full

1 force and effect unless modified or suspended by order of court  
2 pending final judicial decision. Pending final decision on such  
3 review, the acts, orders, and rulings of the State's Attorney's  
4 Office remain in full force and effect, unless stayed by order  
5 of court. However, no stay of any decision of the  
6 administrative agency shall issue unless the person aggrieved  
7 by the decision establishes by a preponderance of the evidence  
8 that good cause exists for the stay. In determining good cause,  
9 the court shall find that the aggrieved party has established a  
10 substantial likelihood of prevailing on the merits and that  
11 granting the stay will not have an injurious effect on the  
12 general public.

13 (Source: P.A. 93-520, eff. 8-6-03; 94-364, eff. 7-29-05;  
14 94-556, eff. 9-11-05; revised 8-19-05.)

15 Section 99. Effective date. This Act takes effect upon  
16 becoming law.